IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 513 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORECHANDRA AJITRAI CHHAYA

Versus

STATE OF GUJARAT

Appearance:

MR J.B.PARDIWALA FOR mr. KB ANANDJIWALA for Petitioner

MR. S.T. Mehta,A.P.P. for Respondent.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 17/02/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. J.B. Pardiwala for Advocate Mr. K.B. Anandjiwala on behalf of the petitioner and learned A.P.P. Mr. S.T.Mehta,for the respondent-State.

1. The petitioner has prayed to quash and set aside the First Information Report (FIR) registered vide CR no.2/81 at ACB Junagadh and also to drop the proceedings of Spl. Case no.10/92 pending in the Court of Special Judge, Junagadh initiated pursuant to above stated FIR and to discharge the petitioner as accused of the said case.

2. The petitioner-Kishorechandra Ajitrai Chhaya was serving as a Chief Officer of Mangrol Municipality since 1971. That on 28-9-1981, a complaint was lodged at ACB Junagadh against the petitioner for the offences under Sec.161 of the Indian Penal Code (IPC) and Sec.5(1)(d) read with Sec.5(2) of the Prevention of Corruption Act, 1947 (" Act" for short).

That the said FIR has been registered vide Cr no.2/1981 at Junagadh ACB Police Station. According to the FIR one Hasan Ibrahim Ganchi resident of Mangrol was awarded a contract for removal of garbage and rubbish articles by Mangrol Municipality for the period from 1-4-1981 to 31-3-1982. It is alleged by said Hasan Ibrahimbhai that on 22-9-1981 present petitioner issued a notice to said Hasan Ibrahimbhai stating that by not removing the garbage and rubbish articles within 12 hours said Hasanbhai as a contractor had committed breach of condition no.9. Furthermore, as installments of the contract amount of Rs.6775/- was to be paid on 22-9-1981, for that also, a notice was given to him. That Hasan Ibrahimbhai went to meet the petitioner at his residence on 25-9-1981 alongwith the above stated two notices and requested the petitioner to grant him sometime to comply with the direction given in the notice. It is also alleged by Hasan Ibrahimbhai that the petitioner told him that he would not pursue the notice if Hasan Ibrahimbhai would consider something for the petitioner. That Hasan Ibrahimbhai on that day returned. It is further alleged in the FIR that Hasan Ibrahimbhai was also served with notice dated 20-7-1981 alleging the breach of condition no.12 of the contract for non removal of rubbish articles and as such on 27-9-1981 Hasan Ibrahimbhai again met the petitioner to show some favour in respect to notice served to him by the Mangrol Municipality. It is alleged by Hasan Ibrahimbhai that on that day the petitioner told to Hasan Ibrahimbhai that no steps have been taken against Hasan Ibrahimbhai till then, however, Hasan Ibrahimbhai should understand something and should pay Rs.500/- towards gratification and he should pay the said amount before 15.30 hours of 28-9-1981 when the petitioner would be leaving for office from home. Hasan

Ibrahimbhai has further stated in the FIR that petitioner having asked for a bribe to show him favour in respect to notice served to him by Mangrol Municipality, he had come to give complaint, as he did not desire to pay the bribe and to initiate proceedings against the petitioner.

That on the basis of the said FIR, trap was arranged and the petitioner was nabbed and on completion of investigation chargesheet was filed against the petitioner in the Court of Special Judge, Junagadh. Before that, Mangrol Municipality in the meeting of General Body dated 30-7-1982 passed Resolution according sanction to prosecute the petitioner as accused of the said case. That the said case was registered as a Spl. Case no.5/1982 in the Court of Spl. Judge at Junagadh. The petitioner as accused of the said case moved an application Exh.14 praying for discharge on the ground that sanction accorded by Municipality was not legal and proper. That the Spl. Judge, Junagadh, allowed the said application holding that sanction accorded by the General Body of Mangrol Municipality was bad in law as the same was not passed by two-third majority of the members of the General Body of the Municipality which is the removing authority under the provisions of Sec.48 of the Gujarat Municipalities Act read with Sec.6 of the Act.

That the State of Gujarat challenged the said order of the Spl. Judge in the High Court of Gujarat by filing Criminal Revision Application no.204/1983, however, the High Court vide judgment and order dated 2-12-1983 rejected the Revision Application, and as such, the said order of discharge was confirmed.

3. It is averred and contended by the petitioner that after a lapse of period of about six years to the confirmation of the order of discharge of the petitioner in respect to said case, the Investigating Officer once again approached Nagarpallika requesting to accord sanction afresh. That the proposal of the Investigating Officer was considered by the General Body of Nagarpallika and vide Resolution no.36 dated 25-5-1989 Nagarpallika refused to accord sanction. That thereafter, again after the lapse of three years from the date of refusal to accord sanction by the Nagarpallika the Secretary of the Urban Housing Department Gujarat State at Gandhinagar issued show cause notice dated 17-7-1992 under Section 263 (1) of the Gujarat Municipalities Act calling upon the Nagarpallika to accord sanction failing which the Body shall be superseded.

4. It is further averred and contended by the petition that Mangrol Nagarpallika succumbed to the pressure and threat of the State Government given by said notice dated 17-7-1992 and the General Body vide Resolution no.268 dated 30-7-1992 accorded sanction to prosecute the petitioner.

5. That pursuant to said sanction the petitioner was suspended, however, the petitioner challenged the said order of suspension vide Spl. Civil Application no.732/1992 filed in the High Court of Gujarat which was admitted and interim relief was granted. That on 12-10-1992, the State Government withdrew the show cause notice earlier issued to Nagarpallika under Sec.263(1) of the Gujarat Municipalities Act as sanction was accorded by the Nagarpallika to prosecute the petitioner. That by that time, the petitioner retired from service, and as such on 23-4-1998 when Spl. Civil Application no.7327/1992 was notified for final hearing, the petitioner withdrew the said petition.

6. That on account of sanction issued by Mangrol Nagarpallika vide Resolution no.268 dated 30-7-1992 fresh prosecution of Spl. Case no.10/1992 was initiated against the petitioner in the Court of Spl. Judge at Junagadh. The petitioner has challenged the said prosecution in the present petition.

7. Learned Advocate Mr. J.B. Pardiwala has urged two contentions to assail the validity of the said prosecution of Special Case. It is urged that sanction issued by Mangrol Nagarpallika to prosecute the petitioner vide Resolution no.268 dated 30-7-1992 cannot be said to be legal and valid sanction on account of the fact that said sanction has been accorded at the instance of the State Government under the threat of show cause notice dated 17-7-1992 issued under Sec.263(1) of the Gujarat Municipalities whereby Nagarpallika was called upon to accord sanction failing which General Body of the said Nagarpallika was threatened to be superseded. In support of his submission reliance is placed on the observation made by the Supreme Court in the matter of MANSUKHLAL VITHALDAS CHAUHAN VS. STATE OF GUJARAT, reported vide 1998 (1) G.L.R p.793. It is further urged on behalf of the petitioner that in the absence of any explanation about delay for prosecution from 1983 to 1992; the prosecution would be in violation of Articles 21 of the Constitution and could not be sustained. Not only that, it would be a travesty of justice to permit the prosecution at such a belated stage which would mean that appellant would suffer trial/appeal for another

decade which is contrary to the principles of substantial justice through speedy trial. To support the said submission, reliance is placed on the observation made by the Supreme Court in the matter of RAMANAND CHAUDHARY VS. STATE OF BIHAR AND ORS.,reported vide 1994 CR.L.J. 1221.

8. Appreciating the submission urged at the Bar in the context of facts and circumstances apparent from the record, it would be pertinent to note that competent authority-the General Body of Mangrol Nagarpallika consistently refused to accord sanction to prosecute the present petitioner. despite request made by the Investigating Officer time and again till the show cause notice is served by the State of Gujarat dated 17-7-1992 under Section 263(1) of the Gujarat Municipalities Act. It is not in dispute that vide said notice Mangrol Nagarpallika is called upon to accord sanction for prosecution against the petitioner failing which a threat is given that General Body of the Municipality shall be superseded. The facts clearly suggest that but for the said threat of supersession of the General Body, the competent authority was not inclined to accord the sanction to prosecute the petitioner, and as such, on facts, it appears that discretion of the competent authority (Mangrol Nagarpallika) to accord or not to accord sanction is taken away and said authority is compelled to act mechanically to accord the sanction to prosecute the petitioner, and as such, it could not be said to be a valid sanction as held in the matter of M.V.CHAUHAN (supra). Furthermore, the trap was laid against the petitioner in the year 1981 and the chargesheet was filed in the year 1983 which could not culminate into prosecution of trial for want of valid and legal sanction till 1992 as Nagarpallika refused to accord fresh sanction and accorded sanction only on 30-7-1992. Thus, for a period of about ten years nothing was done to prosecute the petitioner on the allegations made vide impugned FIR made in the year 1981.

9. That in the matter of RAMANAND CHAUDHARY (supra), the Supreme Court has observed vide paragraph 5 as under:

"It is not necessary to go into the legal points raised by Mr. Jain as we are inclined to quash the prosecution against the appellant in the peculiar facts and circumstances of the case. After the raid no action was taken by the prosecution for six years. The Public Prosecutor consistently opined that no criminal case was made out against the appellant. The Commissioner on independent consideration refused to grant the sanction but later on at the asking of the DIG(Vigilance) he

changes his view. The prosecution against the appellant is pending for over a period of thirteen years and it would be travesty of justice to permit the prosecution at this stage which would mean that the appellant would suffer trial/appeal for another decade. In view of the facts and circumstances of this case we quash the prosecution pending against the appellant and also the proceedings before the Special Judge (vigilance South Bihar), Patna who took cognizance of the case on November 21, 1990."

10. That in paragraph 39 of the report in the matter of M.V. Chauhan (supra), the Supreme Court has made the following material and relevant observation:

" Normally, when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. But in the instant case, the incident is of 1983 and, therefore, after a lapse of fourteen years, it will not, in Court's opinion, be fair and just to direct that the proceedings may again be initiated from the stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as part of right to life, philosophies, early end of criminal proceedings through a speedy trial."

11. In view of the above stated dicta of the Supreme Court and in the facts and circumstances of the present case, after a lapse of about 20 years it could not be fair and just to prosecute the petitioner on the allegations which were charged in the year 1981, as it would amount to exposing the petitioner to a fresh innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution, and as such, this would be a fit case where further prosecution of Special Case no.10/1992 should be quashed and set aside for the reasons stated hereinabove.

12. On the basis of the foregoing discussion, the petition is allowed. The FIR registered vide CR no.2/1981 at ACB Junagadh alongwith fresh proceedings of prosecution vide Spl. Case no.10/92 pending in the Court of Special Judge, Junagadh are hereby quashed and set aside. Rule to that extent is made absolute. Direct service permitted.

(A.K.Trivedi,J.)

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